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September 30, 2022

Via ECF

Magistrate Arlene Lindsay
United States District Court
Eastern District
225 Cadman Plaza East
Brooklyn, New York 11201

Case No: 20:Cv:5380

Caption: Gutierrez v. Davinci et al.

RE: Discovery Letter Motion

Dear Magistrate Lindsay

This letter represents defendant's second motion to compel to this Court pursuant to Local Rule 37.3. This motion is pursuant to FRCP Rule 37 regarding plaintiff William Rodriguez failure to provide responses to defendant's interrogatories which were first served on plaintiff on March 23, 2022 and then resented again to plaintiff several weeks before the deposition was scheduled. The reason this motion is being made now is due to the representations made by opposing counsel that they would be complying with the responses at least at a minimum a day or two before the scheduled deposition date . My office sent several requests by email requesting that these interrogatories be produced before the deposition. Opposing counsel and my office discussed this request and counsel indicated in our phone conversations prior to the depositions being scheduled

that he “knows I need these” and that he would provide same before the deposition of Mr. Rodriguez. We had also requested at that same time interrogatory responses for Jose Gutierrez in the same request which were also delinquent but then finally produced on September 27, 2022 three days before his deposition. We scheduled the deposition of Mr. Rodriquez for Today, September 30, 2022 in good faith on the condition that these would be provided before the deposition. We suggested to opposing counsel that we adjourn the deposition till next week for him to get the required responses, he refused.

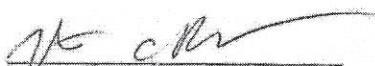
We scheduled plaintiff Jose Gutierrez for this morning ,which was completed, and before going forward with Mr. Rodriquez I asked counsel if he was going to provide the interrogatories for Mr. Rodriquez. He was unable to provide them or give a reason why they were not or could be produced. I instructed Mr. Monteiro that we would like those responses to be produced pursuant to Rule 37 and would be willing to adjourn the deposition to next Friday October 7, 2022 for him to get those responses. Mr. Monteiro insisted we take his client’s deposition ,Today since he was available by video and was not willing to schedule the deposition for another date by October 7, 2022 so his client could comply with the required responses.

These interrogatories are vital to the preparation of defendant’s defenses especially in light of the pertinent recently discovered inconsistencies of the plaintiffs between their written responses to interrogatories and their testimony and whether plaintiffs properly understood the documents they were attesting to. Some of these inconsistencies concern the statements of hours worked which is material to this case. Plaintiff Mr. Rodriquez from the representations made by counsel would only be participating in any deposition by video.

Throughout this proceeding Plaintiff’s counsel has persistently advised this Court of what he believes are defendants violations of discovery. The Court has ruled previously

on some of those issues. However in this case plaintiff has decided not to produce interrogatory responses for William Rodriquez and this Court should hold plaintiff accountable as well. This motion was avoidable had plaintiff's counsel just produced the interrogatories as required or agreed to adjourn the deposition witness till October 7 and produced the responses before and we could then depose his client. Counsel has refused to adjourn or respond to that offer in good faith or to resolve this matter other than to force my office to make this motion, which we would rather not have to do.

Defendants request that this Court order that plaintiff William Rodriquez produce interrogatory responses and that any deposition of Mr. Rodriquez be scheduled after the responses are produced.



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